

1 Deborah J. Fox (SBN: 110929)
dfox@meyersnave.com
2 David Mehretu (SBN: 269398)
dmehretu@meyersnave.com
3 Catherine L. Carlisle (SBN: 298316)
ccarlisle@meyersnave.com
4 MEYERS NAVE
555 Capitol Mall, Suite 1200
5 Sacramento, California 95814
Telephone: (916) 556-1531
6 Facsimile: (916) 556-1516

7 Attorneys for Defendants
NEVADA COUNTY and KATHARINE
8 ELLIOTT

9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**
11

12 TUCK’S RESTAURANT AND BAR, a
California corporation, KENNETH R. PAIGE;
13 CHAD PAIGE; BUCKMAN ENTERPRISES,
LLC, a California limited liability company;
14 ROBIN BUCKMAN; and THE NEVADA
COUNTY RESTAURANT COALITION, an
15 unincorporated membership association,

16 Plaintiffs,

17 v.

18 NEVADA COUNTY, CALIFORNIA;
KATHARINE ELLIOTT; and DOES 1-10
19 inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 2:20-cv-02256-KJM-CKD

**SEPARATE STATEMENT OF
UNDISPUTED FACTS IN SUPPORT OF
NEVADA COUNTY DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, SUMMARY
ADJUDICATION**

Judge: Hon. Kimberly J. Mueller

Date: January 26, 2024

Time: 10:00 a.m.

Crtrm: 3

Trial Date: None Set

1 Pursuant to Local Rule 260(a), Defendants Nevada County and Katharine Elliott (the
 2 “Nevada County Defendants”) submit this Separate Statement of Undisputed Material Facts in
 3 support of their Motion for Summary Judgment or, in the Alternative, Summary Adjudication:

No.	Undisputed Fact	Supporting Evidence
1.	The State of California and Nevada County (the “County”) issued and enforced public health orders and guidance between March 2020 and June 2021 related to COVID-19 (the “Public Health Orders”).	Exhs. 1-11; Exh. 15 at 4 [36:16-19], 5-6 [37:14-38:1]; Exh. 14 at 4 [30:10-16], 5 [32:5-14]; Exh. 16 at 4 [32:20-24], 5-6 [33:11-34:24].
2.	The Public Health Orders in place in July and August 2020 required both restaurant employees and customers to wear face coverings, implement capacity limitations and social distancing measures, and refrain from offering live music indoors.	Exh. 5; Exh. 6 at 2-3; Exh. 15 at 6 [38:2-17]; Exh. 14 at 5-6 [32:15-33:13], 6 [33:22-25]; Exh. 16 at 5-6 [33:25-34:24]; Exh. 12 at 2-6 [RFA Nos. 7, 10, 12, 15, 21, 23]; Exh. 13 at 3-6 [RFA Nos. 10, 12, 15, 20, 22].
3.	Between July 13, 2020 and August 28, 2020, the Public Health Orders required restaurants to cease indoor dining services.	Exh. 6; Exh. 7; Exh. 8; Exh. 15 at 10 [45:1-5]; Exh. 14 at 7 [41:3-12]; Exh. 16 at 7 [39:6-9]; Exh. 12 at 2 [RFA No. 4]; Exh. 13 at 2 [RFA No. 4].
4.	In July 2020, Plaintiff Tuck’s Restaurant and Bar (“Tuck’s Restaurant”) violated the Public Health Orders in place at that time.	Exh. 15 at 7 [42:2-6], 8-9 [43:20-44:3], 9 [44:15-18]; 10-11 [45:23-46:2], 11 [46:11], 12 [48:13-16], 18 [55:10-13], 18 [55:18-19], 18-19 [55:23-56:8]; Exh. 14 at 7 [41:3-23], 10 [54:7-10], 10-11 [54:23-55:7], 11 [55:9-19]; Exh. 12 at 2-8 [RFA Nos. 5, 11, 13-14, 22, 25, 36].

No.	Undisputed Fact	Supporting Evidence
5.	In July 2020, Plaintiff Buckman Enterprises LLC d/b/a Old Town Café (Old Town Café) violated the Public Health Orders in place at that time.	Exh. 16 at 7 [39:1-12], 8 [41:9-12], 9 [43:15-20], 9-10 [43:25-44:7], 20 [59:18-21], 21 [60:11-14], 22 [61:7-11], 26 [66:4-11]; Exh. 13 at 2-7, 9 [RFA Nos. 5, 11, 13, 14, 16, 21, 24, 31, 40].
6.	During the time period when the Public Health Orders were in place, the County endeavored to ensure that food service establishments within the County complied with the applicable requirements.	Irani Decl. at ¶ 4; Elliott Decl. at ¶ 3; Exh. 19 at 7 [59:3-4].
7.	Between March 2020 and June 2021, the County provided food service establishments – including Tuck’s Restaurant and Old Town Café – with updates regarding the Public Health Orders, as well as guidance on compliance with same.	Irani Decl. at ¶ 5; Exh. 19 at 3 [24:12-14]; Exh. 15 at 22-23 [64:25-65:18]; Exh. 14 at 21-22 [78:17-79:21]; Exh. 16 at 14 [51:2-14]; Exh. 12 at 8 [RFA No. 35]; Exh. 13 at 7 [RFA No. 30].
8.	In general, when the County received complaints from the public that restaurants were not following the Public Health Orders, it attempted to gain voluntary compliance by, inter alia, contacting the restaurants to inform them of the complaints, providing additional information about the requirements, visiting the restaurants to ensure they were meeting the requirements, and meeting with restaurant owners to provide education or assistance to help the restaurants come into compliance.	Irani Decl. at ¶¶ 6-7; Exh. 19 at 5 [31:8-18]; Exh. 18 at 5-6 [14:24-15:6], 8 [18:10-17], 11-12 [29:16-30:4], 12-13 [30:22-31:11]; Exh. 17 at 3 [13:13-22], 4-5 [29:23-30:3], 7 [32:8-23].
9.	Because of the large number of food facilities in the County, County officials did not conduct inspections for compliance with the Public Health Orders in the absence of citizen complaints.	Irani Decl. at ¶ 7; Exh. 19 at 5 [31:8-24], 6 [32:20-23]; Exh. 18 at 7 [17:8-9].

No.	Undisputed Fact	Supporting Evidence
10.	Most restaurants in violation of the Public Health Orders were willing to work with the County to come into compliance with the requirements.	Irani Decl. at ¶ 8.
11.	For the few restaurants that continued to violate the Public Health Orders after discussions with County officials, the County issued Notices of Violation, and, in some cases, imposed fines, issued closure orders, and temporarily suspended the restaurants' operating permits.	Irani Decl. at ¶ 8.
12.	Tuck's Restaurant and Old Town Café were some of the few food service establishments in the County that did not voluntarily comply with the Public Health Orders.	Irani Decl. at ¶ 8.
13.	The County received complaints from citizens and other local businesses in July 2020 that Tuck's Restaurant and Old Town Café were violating the Public Health Orders.	Irani Decl. at ¶ 9; Exh. 21; Exh. 22.
14.	The County contacted Tuck's Restaurant in July 2020 regarding the complaints it received and the restaurant's non-compliance with the Public Health Orders.	Irani Decl. at ¶ 10; Exh. 15 at 11 [46:2-7], 24-25 [66:22-67:13], 25 [67:15-24], 26 [68:11-25]; 27 [69:1-3], 27 [69:8-11], 28-30 [70:24-72:4], 31-32 [73:23-74:2]; Exh. 14 at 24-25 [81:24-82:14], 26 [83:6-9], 27-28 [84:23-85:14], 31-33 [88:9-90:14]; Exh. 18 at 3-4 [12:12-13:4], 9-10 [24:23-25:8].
15.	When the violations persisted, the County issued Tuck's Restaurant and Old Town Café Notices of Violation on July 21, 2020, and ordered their immediate closure.	Irani Decl. ¶ 11; Exh. 23; Exh. 24; Exh. 25; Exh. 26; Exh. 12 at 8 [RFA No. 37]; Exh. 13 at 7-8 [RFA No. 32].

No.	Undisputed Fact	Supporting Evidence
16.	After receiving the Notices of Violation and closure orders on July 21, 2020, Tuck's Restaurant and Old Town Café continued to violate the Public Health Orders.	Irani Decl. at ¶ 12; Exh. 15 at 37 [79:18-23]; Exh. 14 at 40 [97:8-12]; Exh. 16 at 30 [72:2-6]; Exh. 12 at 9-10 [RFA Nos. 42, 45]; Exh. 13 at 8-9 [RFA No. 37].
17.	When Tuck's Restaurant and Old Town Café continued to violate the Public Health Orders after July 21, 2020, the County imposed fines on the restaurants and temporarily suspended their operating permits.	Irani Decl. at ¶ 12; Exh. 12 at 9-10 [RFA Nos. 43-44]; Exh. 13 at 9 [RFA Nos. 38-39].
18.	The County enforced the requirements of the Public Health Orders with regard to Tuck's Restaurant and Old Town Café in July 2020 because the restaurants were not in compliance with the Public Health Orders.	Irani Decl. at ¶¶ 9-12; Exh. 23; Exh. 24; Exh. 25; Exh. 26; Exh. 15 at 33-35 [75:18-77:8], 49 [95:9-16]; Exh. 14 at 36-37 [93:23-94:12], 45 [103:2-5]; Exh. 16 at 31 [73:9-12], 60 [127:2-13]; Exh. 12 at 8 [RFA No. 37]; Exh. 13 at 7-8 [RFA No. 32].
19.	After fines were imposed on Tuck's Restaurant and Old Town Café and their operating permits were temporarily suspended, the County continued to work with both restaurants on achieving compliance with the Public Health Orders.	Irani Decl. at ¶¶ 13-18; Exh. 27; Exh. 28; Exh. 15 at 67-68 [121:15-122:5], 68 [122:18-23], 70-72 [124:11-126:8], 72 [126:13-21], 92-93 [174:8-175:14]; Exh. 14 at 61 [131:8-18]; Exh. 16 at 49 [93:17-21]; Exh. 12 at 9 [RFA Nos. 39-41]; Exh. 13 at 8 [RFA Nos. 34-36].

No.	Undisputed Fact	Supporting Evidence
20.	When the restaurant owners reached out to the County to discuss their fines and permit suspensions, the County agreed to a meeting which took place on August 3, 2020 to help the restaurants achieve compliance with the applicable Public Health Orders.	Irani Decl. at ¶ 15; Elliott Decl. at ¶ 4; Exh. 15 at 68 [122:18-23], 72 [126:13-21]; Exh. 14 at 61 [131:8-18]; Exh. 16 at 49 [93:17-21]; Exh. 12 at 10 [RFA No. 47]; Exh. 13 at 9-10 [RFA No. 42].
21.	The County reinstated Tuck’s Restaurant’s and Old Town Café’s permits on August 4, 2020 based on the Plaintiffs’ representations that they would comply with the Public Health Orders and their implementation of the necessary steps to cease dine-in operations as required, as confirmed by County inspections.	Irani Decl. at ¶ 16; Exh. 30; Exh. 31; Exh. 28; Exh. 32; Exh. 33; Exh. 34; Exh. 15 at 92-93 [174:8-175:14], 93-96 [175:23-178:9], 96 [178:10-12], 96-99 [178:15-181:8], 100 [182:7-22]; Exh. 14 at 72 [155:6-8], 72-77 [155:15-160:9]; Exh. 12 at 11 [RFA No. 52].
22.	After the August 3, 2020 meeting, the County agreed to stay enforcement of the fines imposed on Tuck’s Restaurant and Old Town Café, and subsequently reduced them based on Plaintiffs’ compliance commitment and efforts.	Irani Decl. at ¶ 18; Elliott Decl. at ¶ 6; Exh. 33; Exh. 34; Exh. 15 at 99 [181:12-15], 100-101 [182:23-183:13]; Exh. 12 at 11 [RFA No. 50]; Exh. 13 at 10 [RFA No. 45].
23.	The Nevada County Defendants never refused to negotiate a reduction in the fines imposed on Tuck’s Restaurant or Old Town Café following the July 21, 2020 Notices of Violation and closure order.	Exh. 15 at 104 [220:4-22]; Exh. 16 at 59 [125:1-4].

No.	Undisputed Fact	Supporting Evidence
24.	The Nevada County Restaurant Coalition was not established until after the August 3, 2020 meeting.	Exh. 15 at 54-55 [100:11-101:14]; Exh. 14 at 59 [128:4-18], 59-60 [128:25-129:2]; Exh. 16 at 37-38 [79:25-80:5].
25.	The Nevada County Defendants never stated that the establishment of the Coalition was grounds for refusing to negotiate a reductions in fines imposed on Tuck's Restaurant or Old Town Café.	Exh. 15 at 110-111 [243:25-244:9].
26.	The County's goal for agreeing to reinstate permits or reduce fines was to ensure compliance with the Public Health Orders, and to assist restaurants in coming into compliance.	Irani Decl. at ¶ 20; Elliott Decl. at ¶ 7; Exh. 19 at 7 [59:3-4].
27.	If a restaurant committed to comply with the Public Health Orders or took steps to comply, the County would reinstate its permit or reduce its penalties.	Irani Decl. at ¶ 20; Elliott Decl. at ¶ 7.
28.	After the August 3, 2020 meeting, Plaintiffs publicly opposed the Public Health Orders and encouraged others to do so.	Exh. 15 at 54-55 [100:11-101:14], 56-58 [106:9-108:10], 59-66 [109:9-116:25]; Exh. 14 at 55-58 [119:16-122:6]; Exh. 16 at 32-46 [74:21-88:3], 47-48 [90:20-91:19]; Exh. 12 at 13-16 [RFA Nos. 60, 64, 68, 72]; Exh. 13 at 12-15 [RFA Nos. 55, 59, 63, 67].
29.	The County Defendants never imposed fines on Tuck's Restaurant or Old Town Café or suspended their permits at any time after the August 3, 2020 meeting, while the Public Health Orders were in place.	Irani Decl. at ¶ 24; Exh. 15 at 102-103 [215:23-216:3]; Exh. 12 at 11 [RFA No. 51]; Exh. 13 at 10 [RFA No. 46].

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

No.	Undisputed Fact	Supporting Evidence
30.	All of the Public Health Orders have been rescinded and are no longer in effect.	Exh. 2; Exh. 3; Exh. 4; Exh. 10; Exh. 11.

DATED: November 21, 2023

MEYERS NAVE

By: /s/ David Mehretu

DEBORAH J. FOX
DAVID MEHRETU
CATHERINE L. CARLISLE
Attorneys for Defendants
NEVADA COUNTY and KATHARINE
ELLIOTT

5533244